

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>  
(240) 777-6600

**CASE NO. A-6582  
PETITION OF MARK W. ABBOTT AND DEMETRA APOSPOROS**

REVISED OPINION OF THE BOARD

(Date of Original Opinion: October 17, 2018)

(Worksession held January 9, 2019)

(Date of Revised Opinion: January 17, 2019)

Case No. A-6582 is an application for a variance needed to allow the construction of a room addition. The proposed construction requires a variance of eight (8) feet as it is within twelve (12) feet of the rear (western) lot line.<sup>1</sup> The required setback is twenty (20) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals first held a hearing on this application on October 10, 2018. Petitioners Mark W. Abbott and Demetra Aposporos appeared at the hearing in support of the application. In a written Opinion dated October 17, 2018, the Board granted the requested variance.

The Board is in receipt of a letter with attachments dated December 13, 2018, from the Petitioners, who indicate that due to an inadvertent mistake made by County staff in the course of assisting them with revisions to their site plan in preparation for their variance filing, the extent of the variance sought before the Board was incorrectly noted, and should have been eight (8) feet instead of the five (5) feet that the Board granted. See Exhibit 13. The Petitioners request the issuance of a revised Opinion that accurately reflects the extent of the variance needed. They stress that they are not changing the dimensions or the location of their proposed addition. In support of their request, the Petitioners present the scaled site plan that they originally took to the County's Department of Permitting Services (DPS) showing the proposed construction 12 feet from the rear property line, and the site plan as revised by DPS and subsequently filed with the Board, accurately showing the size of the proposed addition and its relative proximity to the rear lot line, but containing an incorrect handwritten statement of the distance between the proposed addition and the rear lot line (15 feet). See Exhibits 13(a) and (b). They also provide a copy of their elevations on which it is evident that the stated distance from their proposed structure to the property line was changed from 12 feet to 15 feet. See Exhibit 13(c).

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<sup>1</sup> The Petitioners originally sought a variance of five (5) feet from the twenty (20) foot rear lot line setback.

After considering the Petitioners' December 13, 2018, letter and attachments, and based on the evidence presented at the original hearing, as supplemented by this later submission, the Board finds that the reasons set forth in the Board's October 17, 2018, Opinion for the grant of a variance on this property are still valid. Thus the Board finds that this requested revision to the Board's original variance decision can be **granted**. The Board stresses in doing so that there has been no change to the size or location of the proposed construction as shown on the Petitioner's site plan, which is scaled and which, had a scale been used, correctly depicts the distance between the proposed construction and the rear lot line. This revised Opinion is issued solely to correct a misstatement of the extent of the variance granted and the underlying, hand-written misstatement of the distance between the proposed construction and the rear property line.

## EVIDENCE PRESENTED

1. The subject property is Lot 10, Block 10, Ashburton Subdivision, located at 9800 De Paul Drive, Bethesda, MD, 20817, in the R-60 Zone. It is a corner lot, bordered by De Paul Drive to the east and Stoneham Road to the south, generally regular in shape, with a curved lot line along the intersection of the two streets. See Exhibit 4.

2. The Statement of Justification states that the Petitioners purchased this property in 2003, and are raising their family there. It states that they are seeking "to add a modest 337 square foot room on the back of the house to give our family a little more living space to our 3 bedroom house." The Statement notes that the positioning of the existing house on the lot poses a hardship for them in pursuing this construction, as follows:

The circumstances requiring a variance result from the way in which the house was positioned on the lot when it was built. As a corner house, the building is set deeply into the lot, and also on an approximately 45% angle within the lot, resulting in one corner of the building having a substantially smaller setback to the rear property line than the other. This positioning makes the proposed sunroom over a few feet from the standard setback at one corner of the proposed addition – approximately 10% of the proposed addition is over the required setback line. Most of the corner houses in our neighborhood are similarly positioned – this was a design feature of the neighborhood. Many other neighboring corner houses have built similar additions, often with less of a setback than the one for which we are seeking a variance, as we have detailed in photographs taken around the neighborhood; this setback issue seems to be a common problem among corner houses.

See Exhibit 3.

3. The Statement of Justification asserts that the proposed construction would conform with the development pattern in the neighborhood:

Throughout the neighborhood and the surrounding ones (ie., across and south on Old Georgetown Road), there have been quite a large number of rear additions placed on homes; a significant number of these are sunrooms of the size and scale being proposed in this project (such sunroom additions are the smallest additions on the homes in our area; many rear additions in our neighborhood and surroundings are quite large and oversized). The proposed addition does not break the building envelope of the house; it is in scale and of a modest size; it conforms to and blends in with the typical architecture, angles, and rooflines of the neighborhood; and it is fully complementary to the style of the building, which is a 1950s split-entry ranch.

See Exhibit 3. The Petitioners include photographs of many such additions with their submission. See Exhibits 5(b)-(g).

4. With respect to the impact of the proposed construction on neighboring properties, the Statement of Justification notes the following:

Because only one corner of the addition is over the setback by a few feet, there is no practical or actual disruption to any neighbors' sightline—the addition would not adversely impact any of our neighbors, nor would it disturb their use or enjoyment of their properties. The difference of a few feet at one corner or the room is virtually imperceptible when viewing the sunroom from neighboring properties. In fact, we have discussed this addition with 2 of the 3 abutting properties owners (the 3<sup>rd</sup> property is a rental unit with absentee owner) and shown them the CAD drawing of our plans, both, plus several other neighbors with confronting properties have given their blessing/approval for the project. We are submitting supporting letters with our application from the listed owners.

See Exhibits 3, 7(a)-(g), and 10.

5. At the hearing, Petitioner Mark Abbott testified that he and his wife were requesting the minimum variance necessary to overcome the "strange" placement of their house on the subject property. He noted that the corner houses in the original development were sited "kitty corner" on their lots. He testified that the proposed rear addition conforms to the pattern of additions in the neighborhood, and that his neighbors support the grant of the requested variance.

In response to an observation from the Board that only one corner of the proposed addition encroaches on the rear setback, and a question asking why they had placed the addition on the left-hand (Stoneham Road) side of the rear of their house as opposed to moving it further towards the right-hand side, Mr. Abbott testified that the proposed placement was intended to avoid the stairway to the basement. He further testified that the proposed addition would sit on a previously-approved foundation. He described the proposed addition as deliberately scaled to match the existing house and neighborhood,

noting that this was an area in which many persons seeking additional space demolish their homes and rebuild them as mansions.

## CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Board finds, based on the testimony of Mr. Abbott, the written Statement of Justification, and the photographs submitted for the record, that there are a large number of homes in this neighborhood that have rear additions, and that "many other neighboring corner houses have built similar additions, often with less of a setback than the one for which [the Petitioners] are seeking a variance," as shown in the photographs at Exhibits 5(b)-(g). Thus the Board finds that the grant of this variance would substantially conform with the established historic or traditional development pattern of this street or neighborhood.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioners are not responsible for the rear additions constructed on corner and other properties in their neighborhood.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested eight (8) foot variance, which will allow the construction of a rear addition on this home, only one corner of which will encroach into the rear setback, is the minimum needed to allow construction on this property commensurate with that in the surrounding neighborhood, and to overcome the practical difficulties that would otherwise be imposed by compliance with the setback restrictions of the Zoning Ordinance.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioners to proceed with the proposed construction is consistent with the residential uses contemplated by the North Bethesda/Garrett Park Master Plan, which seeks to "protect and reinforce the integrity of existing residential neighborhoods."

5. Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.

The Board finds that the proposed sunroom addition will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board notes that the proposed construction is deliberately modest in scale and consistent with the development pattern of the neighborhood. In addition, the Board notes that the Petitioners have discussed their proposed addition with their abutting and confronting neighbors, and that the record contains numerous letters of support for the grant of the variance. See Exhibits 7(a)-(g) and 10.

Accordingly, the requested variance of eight (8) feet from the rear lot line setback is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record, excepted as noted to be incorrect in this Opinion; and
2. Construction shall be in accordance with Exhibits 4 and 5(a), with the clarification that contrary to the hand-written measurement of the distance between the proposed construction and the rear lot line that is shown on those Exhibits, with this grant of the requested eight (8) foot variance, the proposed construction can be within twelve (12) feet of the rear lot line.

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by Bruce Goldensohn, with John H. Pentecost, Chair, in agreement, and Katherine Freeman not in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 17th day of January, 2019.



Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.